IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 12.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Writ Appeal No.2876 of 2001

1. Zarin Taj Begum

2. V.Ramabadhran

3. O.Harindra Kumar Dave … Appellants/Petitioners

vs.

1. The Land Acquisition Officer
and Special Deputy Collector (LA),
Madras City, Chennai.

2. Union of India
represented by Secretary to Govt.,
Ministry of Telecommunications
through Assistant General Manager
(Buildings) Madras Telephones,
No.7 Kushkumar Road,
Nungambakkam, Chennai 600 034. … Respondents/Respondents

Appeal under Caluse 15 of the Letters Patent against the order of the learned single Judge, dated 12.06.2001, made in W.P. No.16135 of 1989.

For Appellants : Mr.Sathish Parasaran

For Respondent-1 : Mr.P.S.Raman, Additional Advocate General, assisted By Mrs.D.Geetha, Addl. Govt. Pleader.

For Respondent-2 : Mr.K.Sridhar, Senior Central Govt. Standing Counsel.

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J U D G M E N T

P. SATHASIVAM, J.

Aggrieved by the order of the learned single Judge, dated 12.06.2001, passed in W.P. No.16135 of 1989, dismissing the Writ Petition challenging the acquisition proceedings, the writ petitioners/land owners have preferred the above Appeal.

2. According to the appellants/writ petitioners, they are the owners of the property in R.S. No.1625/2, measuring 9 grounds 1002 sq. ft., of Egmore Village. The said property was sought to be acquired by the respondents. Notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'Act') was published in the Government Gazette on 01.10.1986. After enquiry under Section 5-A of the Act, declaration under Section 6 of the Act was published on 19.11.1987. After service of the notice under Sections 9(3) and 10 of the Act, Award was passed on 17.11.1989.

3. The appellants/petitioners filed W.P. No.14229 of 1989, challenging the notification under Section 4(1) and declaration under Section 6 of the Act on the ground that the declaration under Section 6 is beyond the prescribed period of limitation. When the said Writ Petition was pending, notice under Section 12(2) of the Act was served on the petitioners, intimating about the passing of the final award. Thereafter, the petitioners filed W.P. No.16135 of 1989, challenging the notice under Section 12(2) of the Act. Meanwhile, the earlier Writ Petition in W.P. No.14299 of 1989 was dismissed on 19.03.1990 by a learned single Judge of this Court. As against the said order, the petitioners preferred an Appeal in W.A. No.970 of 1990. The Division Bench, by order dated 08.11.1990, considering the question raised, directed the petitioners to go before the Civil Court. While directing so, the Division Bench vacated all the findings rendered by the learned single Judge on the questions raised before him in the writ petition including the one relating to the date of publication of the substance of the notification under Section 4 (1) of the Act in the locality. Based on the direction of the Division Bench in W.A. No.970 of 1990, the petitioners filed Civil Suit O.S. No.1917 of 1991 before the City Civil Court, Madras, challenging the acquisition proceedings and also obtained an interim order. The Union of India also filed a suit in C.S. No.159 of 1996 on the Original Side of this Court, seeking for an injunction against the petitioners, restraining them from alienating the property pending acquisition proceedings. The suit filed by the petitioners before the City Civil Court in Civil Suit O.S. No.1917 of 1991 subsequently came to be transferred to this Court and numbered as C.S. No.26 of 1997. Both the suits were ultimately dismissed by this Court by Judgment dated 20.01.1997 on the ground that the suit filed by the petitioners challenging the acquisition proceedings cannot be maintained on the principles laid down by the Supreme Court in State of

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Bihar vs. Dhirendra Kumar (AIR 1995 SC 1955), however, liberty had been given to the petitioners to challenge the acquisition proceedings under Article 226 of the Constitution of India. When the other Writ Petition, viz., W.P. No.16135 of 1989, which is the subject matter of the present Writ Appeal, came up for hearing before the learned single Judge, learned counsel for the petitioners contended that in view of the dismissal of the suit, the petitioners are entitled to advance arguments on merits and the only grievance of the petitioners was that the declaration under Section-6 of the Act was published beyond the period of one year as prescribed, as such, the said declaration is illegal since the same is contrary to the proviso to Section-6 of the Act. Inasmuch as the findings rendered in the earlier Writ Petition, ie., W.P. No.14299 of 1989, had been set aside by the Division Bench, the petitioners were permitted to raise all the contentions that have been available in the latter Writ Petition, viz., W.P. No.16135 of 1989.

4. Before the learned single Judge, the only contention raised was that the declaration under Section-6 of the Land Acquisition Act published in the Gazette on 19.11.1987 is beyond the period of one year, the period prescribed under the proviso to Section 6 of the Land Acquisition Act, hence, the acquisition proceedings are vitiated and liable to be set aside. The learned Judge, basing reliance on the statement of fact made in the counter affidavit of the Land Acquisition Officer and finding that the last mode of 4(1) Notification was effected in the locality on 21.11.1986, held that the declaration made in the gazette on 19.11.1987 cannot be said to be beyond the prescribed period of one year, on the other hand, the same is well within time, and ultimately, dismissed the Writ Petition, hence, the present Writ Appeal.

5. Heard Mr.Sathish Parasaran, learned counsel for the appellants; Mr.P.S.Raman, learned Additional Advocate General for the first respondent; and Mr.K.Sridhar, Senior Central Government Standing Counsel for the second respondent.

6. Mr.Sathish Parasaran argued on the sole ground that inasmuch Section 4(1) Notification was published in the locality on 21.10.1986 and declaration under Section-6 published in the Tamil Nadu Government Gazette on 19.11.1987 is beyond the prescribed period of one year, the entire acquisition proceedings including passing of the Award ought to have been set aside. On the other hand, Mr.P.S.Raman, learned Additional Advocate General, appearing for the first respondent, submitted that, as per records, Notification under Section 4(1) of the Act was published in the locality only on 21.11.1986, hence, the declaration under Section-6 published in the Gazette on 19.11.1987 is well within the prescribed period of one year, therefore, there is no flaw and the proceedings cannot be interfered with by this Court at this stage, which aspect was rightly considered by the learned single Judge, hence, the writ appeal is liable to be dismissed.

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7. We perused the original records and considered the rival contentions.

8. The only point for consideration in this Appeal is as to whether the declaration made under Section 6 of the Act, published in the Gazette on 19.11.1987, was within the prescribed period of one year from the date of publication of the substance of the notification under Section 4(1) of the Act in the locality.

9. It is not in dispute that Section 4(1) Notification was published in the Tamil Nadu Government Gazette on 01.10.1986, proposing to acquire the lands belonging to the appellants situate at R.S. No.1625/2, Egmore Village, measuring 9 acres 1002 sq. ft. The same was published in the Newspapers "News Today" and "Makkal Kural" on 09.10.1986 and 10.10.1986 respectively. There is no dispute about the date of publication of the 4(1) Notification in the Gazette and the Newspapers. However, according to the first respondent/Land Acquisition Officer, 4(1) Notification was published in the locality on 21.11.1986, on the other hand, according to the appellants, it was on 21.10.1986. Only when the said controversy was projected in W.A. No.970 of 1990, the Division Bench, by their Order dated 08.11.1990, after vacating all the findings rendered by the learned single Judge on the question raised before him in W.P. No.14299 of 1989 including the one relating to the date of publication of the substance of the Notification under Section 4(1) of the Act in the locality, permitted the appellants to go before the Civil Court and also directed that the Civil Court shall decide the controversy on its own merits. The Division Bench also observed that the same shall be done by the Civil Court without reference to the dismissal of the Writ Petition and the Writ Appeal. Pursuant to the direction of the Division Bench, the land owners/appellants filed C.S. No.26 of 1997. Even before them, Union of India represented by its Secretary, Ministry of Telecommunications, filed C.S. No.159 of 1996, praying for an injunction against the land owners and others. The learned Judge, by common Judgment dated 20.01.1997, dismissed the suit in C.S. No.159 of 1996 as well as C.S. No.26 of 1997 (OS No.1917 of 1991 on the file of the City Civil Court, Madras) and also the connected Applications. In the same Judgment, the learned Judge, after finding that a writ petition, challenging the award, is pending before this Court, gave liberty to the defendants/land owners to raise other pleas in respect of the validity of the acquisition proceedings by filing additional affidavit and also permitted the State Government as well as the Telecom Authorities to file additional counter, if they so desire, in the Writ Petition.

10. The land owners filed a separate application praying for impleading the Union of India, represented by Secretary, Ministry of Telecommunications and also for permission to amend the affidavit adding certain paragraphs including the plea that the substance of Section 4(1) Notification had been published in the locality only on 21.10.1986 and not

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on 21.11.1986 and as such, the declaration having been issued under Section 6 only on 19.11.1987, the period of one year had elapsed between Section 4(1) Notification and Section 6 Declaration.

11. In the order dated 12.06.2001, accepting the stand of the land owners, the learned Judge made it clear that he decided to consider the matter afresh, not confining to the prayer in respect of Sec.12(2) Notice, by observing that since the earlier findings given in W.P.14299/89 had been set aside by the Division Bench, the same cannot hold good. No doubt, the petitioners have raised the only question about the date of local publication of Section 4(1) Notification. In this regard, it is relevant to refer that when the Writ Appeal was pending before this Court, the First Bench, by order dated 05.05.2004, directed the Chief Judge, Court of Small Causes, to conduct a detailed enquiry with regard to the controversy and the actual date of locality publication of Section 4(1) Notification, particularly from the records and submit a report to this Court. Pursuant to the said direction, the Chief Judge, Court of Small Causes, Chennai-104, issued notice to all the parties concerned and also summoned the original records. On behalf of the appellants, no one was examined as their witness and no document was marked, however, on the side of the first respondent/Land Acquisition Officer, one Velliangiri, Deputy Tahsildar, was examined as RW-1 and R.Lakshmi, Special Revenue Officer, as RW-2 besides marking Exs.R-1 to R-10. One A.S.Ramu/Hand Writing Expert was examined as Court Witness CW.1 and Exs.C1 to C7 were marked as Court Documents. Since the controversy lies is with regard to the date of locality publication of the Section 4(1) Notification and as to whether any correction was made etc., it is useful to refer to the entire Report of the Chief Judge, Court of Small Causes.

> "As per the reference 1st cited, the Hon'ble High Court has directed the Chief Judge, Court of Small causes, Chennai to hold an enquiry on certain issues regarding the date of local publication of 4(1) notification of Land Acquisition proceedings and to submit the report in Writ Appeal No.2876/2001.
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> 2. Accordingly, the enquiry was taken on file as Reference case No.1/2004 and notices were sent to the appellants and the respondents of the Writ Appeal to appear for enquiry and to adduce oral and documentary evidence as directed by the Hon'ble High Court. As per the reference 3rd cited, extension of time was granted to submit the report.
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> 3. Both the parties appeared for enquiry and the appellants have not examined witnesses. The first respondent examined R.Ws.1 and 2 and the second respondent have not examined witnesses. The disputed documents were forwarded to the handwriting expert and

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the opinion of handwriting expert was obtained and the handwriting expert was examined as C.W.1. During the enquiry, Ex.R.1 to R.10, and Ex.C.1 to C7 were marked.

4. The first respondent examined the Deputy Tahsildar, Egmore, Chennai as R.W.1 and he deposed on the basis of the relevant files relating to land acquisition proceedings of the above case. He produced the note file containing pages 1 to 100 relating to the above said land acquisition. The entire Note file was marked as Ex.R.1. In the above file, page no.14 was marked as Ex.R.2. The particulars relating to the publication Under Section 4 (1) of the Land Acquisition Act are mentioned in page No.26 which is marked as Ex.R.3. In page No.14 which is marked as Ex.R.2, it has been noted as follows:

i. Date of publication in the gazette 1.10.86

ii. Date of publication in the locality 21.10.1986
(substance)

iii. Date of publication in the dailies 9.10.1986

The above Office note was prepared on 14.11.86 and the concerned officer has also signed. As per the above document, the local publication was made on 21.10.1986 and the above entry is found without any correction or overwriting. R.W.1 has also admitted the same. In Ex.R.3 as per the evidence of R.W.1, the Deputy Tahsildar, there is no correction relating to the Gazette publication and daily newspaper publication. But in the local publication, the date, month and year have been written for two times and struck off. On the third time, it has been written as 21.11.86. In the above writing, the numerical relating to the month was written as numerical '10' and corrected as '11'. On a perusal of the above documents, the above note file is the origin of the land acquisition proceedings.

5. In Ex.R.3, as per the office note dated 15.9.87, regarding the date of publication of 4(1) notification is as follows:-

i	Gazette	-	1.10.1986
ii	Newspapers	-	9.10.1986
iii	Locality	-	21.10.1986
			5.12.1986
			21.11.1986

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In the above entries, regarding the publication in the locality, the above three dates are noted and the dates relating to 21.10.1986, 5.12.1986 were struck off and finally the date is mentioned as 21.11.1986. In the above entry also, in the numerical column relating to the month '10' has been written and corrected as '11'. R.W.1 has also admitted the above corrections in the chief examination itself. The officer who prepared the above office notes was not examined by the respondents. Similarly, in Ex.R.3, in the office note, it is mentioned as "Hence the D.D. has to be published by 20.10.1987" and in the numerical column, the numerical '10' has been corrected as '11' by overwriting '1' over '0'. The above witness have deposed that regarding the receipt of publication in the Sub-Registrar's office and Taluk Office, the date has been mentioned as 21.11.1986 and the local publication was effected on 21.11.86. During the cross examination by the Appellant, he has admitted that page Nos. relating to the file submitted to the Hon'ble High Court, the page Nos. have been subsequently corrected and in Ex.R.4, Tmt.R.Lakshmi, Revenue Inspector have signed. The above signature was marked as Ex.R.8. R.W.1 have admitted that below the signature of R.Lakshmi, the date has been mentioned as 21.10.1986 and the numerical relating to month was written as '10' and corrected as '11'. Similarly he has admitted that in Ex.R.9, the proceedings of the Special Deputy Collector, the date of local publication was typed as 21.10.1986 and the numerical relating to the month was corrected as '11'.

6. Tmt. R.Lakshmi, then Special Revenue Inspector was incharge of the land acquisition proceedings relating to the above case in the relevant period, she was examined as R.W.2. Tmt.R.Lakshmi deposed that the local publication was made on 21.11.1986 and the publications were handed over to the concerned Taluk Office and Sub-Registrar's Offices on 21.11.1986. She has also admitted that she made the relevant entries in Ex.R.4. During the chief examination, she has denied that her signature marked as Ex.R.8 found on the right side bottom of the document Ex.R.4 was not made by her and she has not mentioned the date, month and year which is found below in Ex.R.8. But during the cross examination by the appellants, at one point of time, she has admitted that the signature marked as Ex.R.8 was made by her and subsequently she changed her mind, and voluntarily deposed that the signature found at the left side bottom

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of Ex.R.4 which is marked as Ex.R.5 alone was made by her. To clarify the above point, the opinion of handwriting expert was sought for. As per the evidence of the handwriting expert, both the signatures found in Ex.R.4 which are marked as Ex.R.5 and Ex.R.8 are made by the same person and by the same coloured ink. It proves that Tmt.R.Lakshmi has signed in two places in the bottom of the document marked as Ex.R.4., one at the left side bottom marked as Ex.R.5 and another signature at the right side bottom marked as Ex.R.8. In Ex.R.5, relating to the date of local publication, there is no correction. But in Ex.R.8, in the column of month, the numerical '10' is written and corrected as '11'. The above entries were marked as 'Q6' and 'Q7' by the handwriting expert and they were compared with the admitted signatures of Tmt.R.Lakshmi which are marked as 'B' and 'C'. The handwriting expert has deposed that both the above signatures were signed by the same coloured ink and they are signed by the same person. He has also given the scientific reasons for the conclusion which is marked along with the expert's report in Ex.C.7 series. In the above signature marked as Ex.R.8, the handwriting expert has given identification as 'Q1' and after examination, he found that in 21.11.1986 the numerical relating to month was written as '10' and subsequently the numerical column '10' was corrected as '11' with a different coloured ink. Similarly, the proceedings of Special Deputy Collector in which the date of local publication was mentioned which was marked as Ex.R.9 was given an identification number as 'Q2' by the handwriting expert and as per his evidence, 21.10.1986 was typed and the numerical '10' which was type-written was corrected by ink as '11'. The evidence of expert proves the above corrections. The handwriting expert has taken the photographs relating to the disputed entries and he has filed the photographs along with the negatives during evidence.

7. In para 5 of the Orders of the Hon'ble High Court, it has been observed that in page No.128 in the office seal as against the Sub-Registrar's office after roman figure 'X', the numerical '1' is added, eclipsing the dot after 'X' casting a doubt that the said numerical '1' might have been added later. Regarding the date seal of Sub-Registrar's office, marked as 'A', as per the evidence of the handwriting expert, he could not give a final opinion relating to the above issue mentioned in para 5 of the orders of the Hon'ble High Court. The handwriting expert has deposed that since there was no

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difference in the colour of the ink used, it is not possible to give a scientific opinion on this point. As per his evidence, relating to the date of publication at the Sub-Registrar's office which is marked as Ex.R.6, there is no correction. Regarding the date seal affixed at the Taluk Office which is marked as Ex.R.7 (marked as O5 by the expert), the handwriting expert has opined that regarding the date, 21.11.86 was written and on the numerical '2', there is an overwriting of numerical '2' with the same coloured ink. He deposed that it is not possible to give scientific opinion whether the numerical '1' in the column relating to the month was subsequently added.

8. Both the respondents have not examined the concerned staff who received the notifications for local publication from Tmt.R.Lakshmi. Similarly, no acknowledgement was received by Tmt.R.Lakshmi that 4(1) notifications were served on the Sub-Registrar's office and Taluk Office, on the concerned date. Similarly, any other relevant document from the Taluk Office and Sub-Registrar's office were not produced to prove the date of receipt of the notifications. Similarly, the names and addresses of the four independent witnesses who have signed in Ex.R.4, is not found in the entire records and it is not possible to summon and examine the above independent witnesses relating to the date of publication of 4(1) notification in the locality.

I submit the above report as ordered by Hon'ble High Court.

Yours faithfully,
Sd/...26.8.04

(A.S.Kannan)"

12. Mr.Sathish Parasaran, by drawing our attention to Exs.R-4, R.5, R.6, R.7, and R.8, all available at page No.134 of Vol.1 of the Files, contended that though the locality publication was effected in the Office of Sub Registrar, Periamet, Taluk Office, Egmore, Nungambakkam, as well as in the locality where the lands situate only on 21.10.1986, in order to cover up the lacunae which goes to the root of the matter and bring Section-6 Declaration within the statutory period of one year, the numerical '10' denoting the month was corrected as '11'. He pointed out that the said aspect is also clear from the enquiry report of the Chief Judge, Court of Small Causes. He further pointed out that the endorsement on the left side, viz., Ex.R-5 which is available at page 134 of the original file is only an after thought to cover up the mistake.

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13. We carefully verified all the above mentioned documents as well as the report of the Chief Judge, Court of Small Causes and the evidence of the Finger Print Expert CW-1 as well as the documents marked as Exs.C1 to C7. As rightly pointed out by the learned counsel for the appellants, though local publication was effected only on 21.10.1986, inasmuch as the declaration was published in the Gazette only on 19.11.1987, the numerical '10' relating to the month was altered as '11' in all convenient places to suit their convenience and case. This is also clear from the evidence of R.lakshmi/RW-2, who put her signature at the bottom of the relevant page viz., 134 of the file. Had the learned Judge verified the original records which we perused while considering the appeal, it would be possible for him to arrive at a conclusion that the declaration published in the gazette on 19.11.1987 is beyond the statutory period of one year. In addition to the same, the First Bench, considering the controversy in the date, directed the Chief Judge, Court of Small Causes to submit a report. It is not the case of anyone that the parties were not afforded adequate opportunity before the Chief Judge, Court of small Causes.

14. Though the factual allegation was not taken in the original affidavit, in view of the fact that the land owners were so permitted by the learned Judge who disposed of the original suits (incidentally the very same learned Judge disposed of the writ petition) and of the fact that they filed an additional affidavit, taking a specific plea that the declaration published in the gazette dated 19.11.1987 is beyond the prescribed period of one year, we have no other option except to accept the contention of the learned counsel for the appellants. Other aspect is, at the time of dismissing the suits in the year 1997, the learned Judge, while giving liberty to the land owners to raise the pleas in respect of the validity of the acquisition proceedings in the pending W.P.16135 of 1989, even though Sec.12(2) notice alone was challenged therein, also permitted the State Government (D-2 in C.S.26/97) to file additional counter affidavit in the said Writ Petition, putting forth their stand. In our view, though the State Government is not impleaded, in view of the specific permission given after extending the liberty to the land owners to raise other pleas, it is but proper for the Government to have come forward with its version before the Court. Thus, when the edifice of the proceedings itself is shaken due to the serious infirmity in adhering to the procedure laid down in the proviso to Section 6 of the Act, resulting in the entire proceedings falling to the ground, the aspect of impleading the Government cannot be viewed seriously in the peculiar facts and circumstances of this case.

15. In the light of the detailed report and the findings rendered therein, we hold that the 4(1) Notification was published in the locality only on 21.10.1986 and so the publication of declaration under Section-6 in the Gazette on 19.11.1987 is beyond the period of one year, violative of proviso to sub-section(1) of Section-6. Consequently, the

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award passed under Section 12(2) of the Act cannot stand. In view of the fact that the acquisition proceedings were initiated as early as on 01.10.1986, the first respondent cannot rectify the defect in any way at this juncture nearly after 20 years. Accordingly, the order of the learned single Judge dated 12.06.2001 in W.P. No.16135 of 1989 is set aside. Consequently, the entire acquisition proceedings are quashed. However, the respondents are at liberty to proceed afresh, if they so desire, in accordance with law. Writ Appeal is allowed with the above observation. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

JI.

To

1. The Land Acquisition Officer and
Special Deputy Collector (LA),
Madras City, Chennai.

2. The Secretary, Union of India,
Ministry of Telecommunication
thro'
The Assistant General Manager (Buildings)
Madras Telephones,
No.7 Kushkumar Road,
Nungambakkam, Chennai-34.

1 cc To The Government Pleader on payment of charges, SR.47896.
1 cc To Mr.Satish Parasuran, Advocate, SR.47948.
1 cc To Mr.K.Sridhar, Advocate, SR.47598.

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